Washington Law Review

Volume 13 | Number 2

4-1-1938

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The Supreme Court, in collaboration with the Judicial Council, has been working on a new edition of its rules to be shortly published in one of the advance sheets and later in a bound volume of Washington Reports.[1] It is contemplated that there shall be published in one advance sheet, the following:

(a) Rules of the Supreme Court (revised);
(b) Rules of Pleading, Procedure and Practice, including the new rules announced in Washington Decisions for March 9, 1938;
(c) Rules relating to admission and disbarment;
(d) General rules of the Superior Court.[2]

The JOURNAL department of the WASHINGTON LAW REVIEW is advised that the new edition of the *Rules of the Supreme Court* will include the following principal changes, effective on a date to be later announced:

(1) An ABSTRACT of record need only be prepared if the statement of facts exceeds two hundred pages instead of one hundred pages, as is now provided in Rule VI;

(2) All BRIEFS on appeal shall refer to the "Statement of facts and also to the abstract in all instances where an abstract is required." Heretofore it has been necessary to make references to the abstract only;

(3) In all appeals the BRIEF OF THE APPELLANT shall consist of the following matters, headed by the title thereof in distinctive type, or in type distinctively displayed, in the following order:

(a) Table of cases;
(b) Statement of questions involved;
(c) Statement of the case;
(d) Assignments of error;
(e) Argument for appellant.

When the case is one involving the exercise of the Supreme

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[1]See announcement of Chief Justice Steinert, WASHINGTON DECISIONS, March 9, 1938.

[2]The attention of the Bar is called to the fact that the general rules of the Superior Courts are not judicially noticed by the Supreme Court and cannot be relied on unless brought up as part of the record, to-wit: the statement of facts or bill of exceptions. Larson v. Dept. of Labor and Industries, 174 Wash. 618.

Court's original jurisdiction, the appellant's brief shall consist of

(a) Table of cases;
(b) Statement of questions involved;
(c) Statement of the case;
(d) Argument of counsel.

(4) The BRIEF OF THE RESPONDENT shall be in form prescribed for brief of appellant and shall consist of

(a) Table of cases;
(b) Any counter-statement of questions involved, including restatement and additional statement;
(c) Any additional statement of the case;
(d) Argument of counsel, in the following order, distinctively captioned:
First. Argument in support of the judgment;
Second. Argument in answer to appellant.

The rule provides that the portion of the respondent's answering brief captioned "Argument" be devoted first to an affirmative argument in support of the judgment below, and that when this affirmative argument is concluded, there then shall follow the respondent's answer to the appellant's argument.

(5) The briefs of all parties shall contain a TABLE OF CASES (alphabetically arranged), textbooks (giving the editions), and statutes, with references to the pages in the briefs where they are cited.

This rule follows Rule 27 of the Supreme Court of the United States, Rule 24 of the United States Courts of Appeal. Much time can be saved in locating the decisions in the brief through a table of cases, which is otherwise wasted in paging through the brief to find a particular case.

(6) Immediately following the table of cases in the brief, counsel are asked to set up, in not more than two pages, a STATEMENT OF THE QUESTIONS involved on the appeal. This rule, as adopted by the Supreme Court, will read as follows:

> "The statement of the questions involved must set forth each question separately, in the briefest and most general terms, without names, dates, amounts or particulars of any kind, and whenever possible each question must be followed immediately by an answer stating simply whether it was affirmed, negatived, qualified or not answered by the court below. If a qualified answer was given to the question, appellant shall indicate, most briefly, the nature of the qualification; or if the question was not answered and the record shows the reason for such failure, the reason shall be stated briefly

in each instance without quoting the court below. The questions and answers in their entirety should not ordinarily exceed twenty lines and must never exceed two pages."

The purpose of such a rule has recently been discussed in this periodical together with forms.[3] *The rule has been adapted from the Pennsylvania appellate practice, with two exceptions: first, two pages are allowed for this purpose instead of one page, and second, the mandatory feature is omitted in the sense that counsel will not be penalized for an improper statement of the questions involved or the inadvertent omission of a necessary question.*

(7) To prevent the FILING OF BRIEFS after argument, and to require them to be filed a sufficient time before the argument, so that they may be distributed to the judges for their reading, the court has extended its present rule of practice[4] as follows:

"The clerk, on the Thursday of the week preceding the hearing, shall deliver to each of the judges a copy of each brief that has been filed in the cause. The respondent's brief must be on file with the clerk of the supreme court not less than ten days prior to the Thursday of the week preceding the week of the hearing. Reply brief in any case must be filed with the clerk of the supreme court not later than Thursday of the week preceding the week of the hearing. Costs for briefs filed later than such dates will not be allowed by the clerk, unless the failure of the appellant to file his reply brief within such time has been occasioned by respondent's failure to comply with this rule."

(8) The court has provided that the SESSIONS OF THE SUPREME COURT shall be held on the second Monday of January, the second Monday of May and the second Monday of September of each year (instead of on the third Monday of September of each year as heretofore) and that *en banc* hearings, rehearings *en banc* and special hearings may be ordered at any time in the discretion of the court.

(9) The clerk will hereafter prepare THE CALENDAR TWO WEEKS in advance of the term instead of ten days as now provided in Rule IX (3).

(10) With respect to the preparation of the STATEMENT OF FACTS, the court for its convenience will require that "At the bottom of each page there shall appear the name of the witness or witnesses testifying, and whether the examination be direct, cross, re-direct or re-cross." This appears to be merely a direction to court reporters with the objective of assisting the court in referring to the statement of facts.

[3]See 13 WASHINGTON LAW REVIEW 68 (January, 1938).
[4]See Rule IX (4).

(11) The rule of practice concerning the FILING OF BRIEFS (See Rule X of the Rules of Pleading, Procedure and Practice) has been modified to the extent, and to the extent only, of requiring all Supreme Court briefs to be filed direct with the Clerk of the Supreme Court instead of with the Clerk of the Superior Court, as is now permissible. This appears to be on the principle followed by appellate courts generally, that all briefs shall be filed direct with the clerk of the appellate court. This change will also eliminate delay which has frequently occurred because Superior Court clerks have occasionally delayed the sending of briefs until briefs in a considerable number of cases had accumulated and could be sent all at one time. The rule in its changed form will impose directly upon the appellant the duty of filing his brief direct with the clerk of the Supreme Court.

(12) With reference to CRIMINAL APPEALS, the new requirement[5] that the Clerk of the Superior Court shall send up the judgment of conviction and notice of appeal, so that the appeal can immediately be docketed by the Clerk of the Supreme Court, has been amended by adding thereto the words "as part of the state's record", in order that it may be entirely plain that this is to be done at the state's expense, and to prevent this portion of the record from being held up in the court below on account of the appellant's failure to pay any transcript fee.

The rule with respect to CRIMINAL APPEALS has also been amended to provide that where the appellant has caused the record to be filed and certified in the Superior Court within the sixty-day period, the jurisdictional requirement has been satisfied, and the appellant will not be prejudiced through the failure of the clerk to lodge the statement of facts in the Supreme Court within the sixty-day limit.

(13) The court has also p r o v i d e d for TWO ADDITIONAL METHODS OF BRINGING UP THE RECORD on appeal, other than by statement of facts:

> "(a) On any appeal or other proceeding for review, in any criminal case, or in any civil case whether cognizable at law or in equity, only so much of the evidence as bears upon the question or questions sought to be reviewed, may be brought before this court by a statement of facts or bill of exceptions, without bringing up all the evidence bearing on other questions not appealed from; and every question so presented shall be reviewable to the same extent as if all the evidence in the case had been brought before this court."[6]

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[5]See WASHINGTON DECISIONS, March 9, 1938, p. vii.

[6]A new rule. See State ex rel. Northeastern Transportation Co. v.

> "(b) When the question or questions presented by an appeal in any civil case, whether cognizable at law or in equity, can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the question or questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the question or questions by this court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal and of the appeal bond, together with their respective filing dates, and a concise statement of the points to be relied on by the appellant, and shall be filed with the clerk of the court below within the time provided for the filing of a statement of facts or bill of exceptions. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the question or questions raised by the appeal shall be approved in writing by the trial judge and, when so approved, shall constitute the record on appeal, and be transmitted to this court in the same manner as a statement of facts or bill of exceptions."[7]

The JOURNAL has been informed that the proposed new edition of all the rules first above mentioned will be published shortly, and that they will be rearranged so as to be of greater utility to the Bar. All of the rules of court relating to appeals (some of which have heretofore been scattered among the rules of the Supreme Court, the Rules of Pleading, Procedure and Practice, and the statutes) will be included in logical order in the *Rules of the Supreme Court* with appropriate cross-references to the statutes; and the Rules of Pleading, Procedure and Practice will continue to embrace those rules relating to practice in the court below.

It is not the purpose of this article to relieve the lawyers of this state of the duty of reading in detail the new edition of the rules when it is published, but solely to advise the Bar specifically of the changes of substance which the Supreme Court has so far indicated.

Superior Court, 194 Wash. —, 94 Wash. Dec. 207; State ex rel. Baer v. Superior Court, 152 Wash. 407. See State ex rel. Larpenteur v. Superior Court, 183 Wash. 252.

[7]A new rule, taken from rule 76 of the Federal Rules of Civil Procedure adopted on December 20, 1937, for the United States District Courts. Adapted from Federal Equity Rule 77 of the Equity Rules of 1912, which is described in HOPKINS FEDERAL EQUITY RULES, 8th Ed., as "admirably adapted to the concise presentation of an issue of law." See Louisville & Nash R. Co. v. U. S., 238 U. S. 1, 11.